



A PHI Company

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June 29, 2009

**VIA FEDERAL EXPRESS**  
**Airbill No. 7967 3388 6806**

Laura Johnson  
Remedial Project Manager (3HS23)  
DE, VA, WV Remedial Branch  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Peck Iron and Metal Site  
Portsmouth, Virginia

Dear Ms. Johnson:

This letter responds to Karen Melvin's May 20, 2009 letter to Joseph Rigby, Chief Executive Officer, Pepco Holdings, Inc. ("PHI") which we received on May 22, 2009 concerning the Peck Iron and Metal Site in Portsmouth, Virginia (the "Peck Iron and Metal Site" or the "Site"). That letter states that Pepco (a subsidiary of PHI) may have CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) section 107(a) liability at the Site "as a person who arranged for disposal or treatment of hazardous substances sent to the Site." That letter requested a written response within thirty calendar days of receiving the letter. In the enclosed June 8, 2009 e-mail, James Van Orden, Esq. of EPA's Office of Regional Counsel confirmed that Pepco's response on or before July 1, 2009 would be timely.

As an initial matter, please note that in June 2008, U.S. EPA Region III sent Pepco a CERCLA section 104(e) request for information concerning the Site. Region III's June 2008 letter suggested that Pepco arranged for the disposal of scrap materials which may have contained hazardous substances, pollutants or contaminants at the Peck Iron and Metal Site at 3850 Elm Avenue in Portsmouth, Virginia (the "Site"). On September 12, 2008, Pepco submitted a timely response to Region III which indicated that Pepco did not have any records indicating that Pepco disposed scrap materials at the Site. Pepco's response also included internal Pepco records seeking or evaluating bids from vendors for scrap metal (scrap air heater baskets, scrap iron and steel, air preheater baskets, scrap metal/cable) that Pepco sought to sell. These records indicated that while Pepco may have offered the Site (or a Peck company in Richmond, Virginia) the opportunity to bid on scrap metal to be sold, the Site did not submit a bid and Pepco sold the scrap metal offered for sale to another entity. In addition, Pepco's response to Region III included documents reflecting that Pepco sold (1) a scrap steel waste tank

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in 1990 and (2) scrap iron/steel in 1991 to Peck Iron and Metal in Richmond, Virginia. The offering of scrap metal for sale and the sale of scrap metal to an entity in a different city from the city in which the Site is located do not provide a basis for liability under CERCLA.

Furthermore, while Pepco requested that Region III provide information in EPA's possession to support the suggestion in EPA's June 2008 CERCLA section 104(e) letter that Pepco "arranged for the disposal of scrap materials which may have contained hazardous substances, pollutants or contaminants" at the Site, Ms. Joan Martin Banks, EPA's Civil Investigator, informed me in a June 8, 2009 telephone conversation that she and EPA's paralegal assigned to this matter have reviewed EPA's CD of documents relating to the Site and have not located any documents to support EPA's June 2008 suggestion that Pepco arranged for the disposal of scrap materials at the Site.

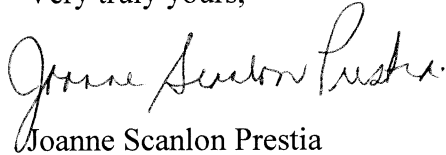
Ms. Martin Banks provided Pepco notes of interviews conducted in December 2008 and January 2009 with former employees who worked at the Site from the 1950's to 1980's. The former Site employee interviewed by EPA's contractor in December 2008 purported to recall that the Site "received steel, wire, cooper [sic] and some transformers from PEPCO" and that he did "not know if the electrical transformers had been drained." The former Site employee interviewed by EPA's contractor in January 2009 is reported to have "stated that PEPCO was a regular customer." EPA has not provided any documentary evidence to corroborate these former employees' recollections.

In its September 12, 2008 response to EPA's CERCLA section 104(e) information request, Pepco provided documents regarding the kinds of scrap metal (scrap air heater baskets, scrap iron and steel, air preheater baskets, scrap metal/cable) that Pepco offered for sale to a number of entities including the Site (or a Peck entity in Richmond, Virginia). Even if the Site had bid on these scrap metal sales and Pepco had sold this scrap metal to the Site, (which Pepco did not do), under CERCLA section 127, such sales of scrap metal do not create CERCLA section 107 liability. Any such scrap metal would be recyclable materials under CERCLA section 127. Any such scrap metal sales, had they occurred, would have constituted the arrangement for recycling of scrap metal, a recyclable material, to which CERCLA section 107 liability would not attach. Nothing in the documents Pepco provided to EPA regarding the offering of scrap metal for sale suggests that the Site was an entity to which Pepco ever offered the kind of scrap metal which may have contained polychlorinated biphenyls in excess of the concentration specified in CERCLA section 127(b)(2), which by statutory definition are not recyclable material, to which the recycling exemption to CERCLA section 107 liability does not apply.

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Ms. Melvin's May 20 letter encouraged Pepco to contact Region III regarding Pepco's willingness or unwillingness to participate in future negotiations concerning the Site. It is not Pepco's practice to decline such a request to confer and, accordingly, Pepco is willing to meet with Region III regarding this matter. Nevertheless, I must emphasize that Pepco is not aware of any legally viable basis for concluding that Pepco has CERCLA liability in connection with the Peck Iron and Metal Site in Portsmouth, Virginia

Very truly yours,

A handwritten signature in cursive script, reading "Joanne Scanlon Prestia".

Joanne Scanlon Prestia  
Counsel for Pepco

Enclosure



VanOrden.James@epamail.e  
pa.gov  
06/08/2009 04:35 PM

To joanne.prestia@pepcoholdings.com  
cc Martin-Banks.Joan@epamail.epa.gov,  
Johnson.Laura@epamail.epa.gov  
bcc

Subject Re: Peck Iron and Metal, Portsmouth Virginia

History:

📧 This message has been replied to.

Dear Joanne:

I wanted to confirm an extension of time to July 1, 2009 for Pepco's response to EPA's May 20, 2009 GNL. Per your request, I will do my best to follow up with you about the documentation on EPA's CD as soon as possible.

Best,

James

James Van Orden  
Assistant Regional Counsel  
Office of Regional Counsel, US EPA, Region 3  
1650 Arch Street (3RC42)  
Philadelphia, PA 19103  
Phone: 215-814-2693  
Fax: 215-814-2603

From: joanne.prestia@pepcoholdings.com  
To: James VanOrden/R3/USEPA/US@EPA  
Date: 06/08/2009 04:31 PM  
Subject: Peck Iron and Metal, Portsmouth Virginia

Dear James.

Thank you for agreeing to provide Potomac Electric Power Company (Pepco) an extension of time, until July 1, 2009, to respond to EPA's May 20, 2009 general notice letter regarding the above-referenced site.

As discussed, you have agreed to review EPA's CD of documents and send me a copy of any documents that allegedly connect Pepco to the site this week or at the latest the middle of next week.

